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APPELLANT PRO SE:

JAMES H. HIGGASON, JR.
Westville, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

JAMES H. HIGGASON, JR.,

Appellant-Plaintiff,

VS.

INDIANA DEPARTMENT OF CORRECTION,

Appellee-Defendant.

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No. 46A05-0608-CV-470

APPEAL FROM THE LAPORTE SUPERIOR COURT
The Honorable Paul J. Baldoni, Judge
Cause No. 46D03-0607-SC-920

June 12, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-plaintiff James Higgason, Jr., appeals the trial court's dismissal of his action against appellee-defendant Indiana Department of Correction (DOC). Specifically, Higgason argues that Indiana Code section 34-58-2-1¹ is unconstitutional. Concluding that there was no error, we affirm the trial court's dismissal of Higgason's action.

FACTS²

On July 19, 2006, Higgason, an inmate at the Westville Correctional Unit (WCU) in LaPorte County, filed a complaint against the DOC for actions by its employees that allegedly impeded his access to the courts. In response to the complaint, the trial court entered the following order on July 24, 2006:

Pursuant to Indiana Code 34-58-1-1, et al., the Court has ordered this claim docketed and has conducted a review as required by Indiana Code 34-58-1-2.

On July 19, 2006, James H. Higgason, Jr. filed a Notice of Claim in which he asserted, in part, that he was in danger of serious bodily injury. He has listed a series of events where he allegedly was injured by D.O.C. employees. Indiana Code 34-58-2-1 states that Mr. Higgason may not file a new complaint or petition unless the Court determines that he is "in immediate danger of serious bodily injury as defined in I.C. 35-41-1-25". The three prior claims filed by Mr. Higgason have been dismissed pursuant to Indiana Code 34-58-1-2.

Here, Mr. Higgason requested that the Clerk's office file stamp his pleadings before July 24, 2006 for the reason that the two-year statute of limitations expires on that date. The events he chronicled occurred approximately two

¹ Indiana Code section 34-58-2-1 provides:

If an offender has filed at least three (3) civil actions in which a state court has dismissed the action or a claim under IC 34-58-1-2, the offender may not file a new complaint or petition unless a court determines that the offender is in immediate danger of serious bodily injury (as defined in IC 35-41-1-25).

² As we have previously noted, Higgason is no stranger to the trial and appellate processes. A recent opinion from our court indicates that Higgason has instituted nearly 120 actions during his thirty-one years of imprisonment. See Higgason v. Ind. Dep't of Corr., 864 N.E.2d 1133, 1135 n.1 (Ind. Ct. App. 2007).

years ago. Thus, Mr. Higgason has failed to establish that he is in immediate danger of serious bodily injury.

The Court now finds that Mr. Higgason has not met his duty to show the Court that he is in immediate danger of bodily injury as defined by Indiana Code 35-41-1-25.

WHEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that James Higgason's Notice of Claim of July 19, 2006 is dismissed, with prejudice.

Appellant's App. p. 1 (emphasis in original). Higgason now appeals.

DISCUSSION AND DECISION³

Higgason argues that the trial court erred in dismissing his complaint pursuant to Indiana Code section 34-58-2-1 because the statute is unconstitutional. A panel of our court recently addressed this argument by Higgason and concluded that Indiana Code section 34-58-2-1 "does not unreasonably deny offenders the right of access to the courts, but offers a balance between an offender's right to bring a civil action and the heavy burden that those claims have placed on our judicial system." Higgason, 864 N.E.2d at 1137. We adopt the Higgason panel's analysis and conclusion and, therefore, affirm the trial court's dismissal of Higgason's action.

The trial court's dismissal of the action is affirmed.

FRIEDLANDER, J., and CRONE, J., concur.

³ On November 20, 2006, the Indiana Attorney General filed a notice of non-involvement and a motion to correct the record, arguing that "the trial court screened and then dismissed the case on the same day it was filed. Accordingly, the Defendant was not served and the Indiana Attorney General did not appear in the trial court on behalf of the Defendant." We acknowledge the Attorney General's noninvolvement and grant its motion to correct the record on appeal to reflect such.